

## MEMORANDUM

**TO:** Jeff Levine, Director  
Planning & Urban Development Department

**FROM:** Jennifer L. Thompson, Associate Corporation Counsel

**DATE:** May 31, 2018

**RE:** Questions regarding R-6 Overlay and interplay of site plan and design standards

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I understand that, in connection with the proposed Munjoy Hill Neighborhood Conservation Overlay District (the “Overlay”), questions have arisen regarding the interplay of site plan review, zoning, and design standards. This memo will attempt to outline the general regulatory framework for land use development in the City and clarify the applicability of the City’s various standards.

In order to orient the discussion, I start with a bit of background: Land use and development are subject to review by the City only as expressly required by our Code. Typically, review takes three major forms: subdivision, zoning and site plan. The questions that are circulating regarding the Overlay relate exclusively to zoning and site plan review, so I’ll focus on those.

Under Chapter 14, there are 3 levels of site plan review that are required, depending on the size and scope of the proposed development. Level I site plan review is for relatively small projects, typically involving site alterations or 1 or 2 additional residential dwelling units on a site. The review for Level I projects is done administratively by staff who apply the guidelines set by the Council. Level II is for somewhat larger projects and is also typically reviewed administratively, though can be referred to the Planning Board as appropriate. Level III site plans are required for larger-scale projects and are approved exclusively by the Planning Board, also using standards articulated by the Council. The differing levels of review are outlined in Section 14-523 of the Code.

Currently, the "Design Standards" commonly referred to in your Munjoy Hill work consist of both the "Zoning Related Design Standards" (largely dimensional in nature) outlined in Section 14-526(a)(9) of the site plan review ordinance and the guidelines outlined in the City's "Design Manual" which is incorporated in Section (a)(9) of the site plan ordinance by reference. Both sets of design standards are expressly articulated as standards that apply to all levels of site plan review. The specific design standards that are applicable to a development depend on the zone in which it sits but for projects in, for example, the R-6, all residential developments are subject to the City's design standards if they are also subject to site plan review.

With respect to applications for site plan review and the extent to which conformance with design standards is required, the answer is, “yes.” As noted above, meeting the design standards outlined in the design manual is its own requirement and applies to all residential development in the R-6 (see Section 14-526(a)(9)(a)(vi)(d)). Therefore, where a development meets dimensional

standards but does not meet other requirements in the design manual, a site plan application can be denied. So long as a residential development in the R-6 is subject to site plan review, it must meet both the dimensional requirements and the design standards.

Another question has arisen regarding the extent to which design standards are applicable to projects that are not subject to site plan review. Under the Code as it currently exists, the City's design standards are not generally applicable unless a project is subject to site plan review. As noted above, land uses and development only come under the City's review when the Council has expressly required it. That is, we can only apply our development standards, including design standards, when a development is required to be approved by the City. If something is not subject to site plan review (which is the context in which design standards are currently applied) then there is no basis or grounds for the City to require conformance with those standards. However, there are some cases where design standards are written directly into the zoning code, in the form of dimensional standards. In those cases, those standards would apply regardless, and be implemented as part of the regular review of a project for a building permit.